IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2423 OF 2006

IN

SUIT NO.110 of 1988

Ras Cons.Pvt.Ltd .... Plaintiff

versus

Tekma Machinery Manu.Co.Pvt.Ltd & anr.. Defendants

Mr.Murtaza Ali i/b Law Charter & Co for Plff

Mr.Vikas Mahanagare for Deft nos. 1 & 2 in support of NM

CORAM: SMT.ROSHAN DALVI, J

DATE : 14th November, 2006

P.C.

1. This suit is filed on an agreement for sale of immovable property consisting of a running factory. The agreement for sale was entered into on 12th January, 1985. The suit has been filed on 5th

January, 1988. The written statment in the suit has not yet been filed, 18 years after the suit. There is therefore, an order of this Court dated 30th June, 2006 to proceed ex parte and without the written statement.

2. The present director of the plaintiffs is the widow of the erstwhile director. It is her case in the Notice of Motion that her husband was looking after the suit and handling the matter. How he handled the matter is not known, since nothing whatsoever is done by him. The most important aspect of the matter is filing of the defence which is by way of written statement.

3. The previous advocates for the defendants have taken a discharge. The present advocate learnt very late that the written statement was not even filed and has kept the same ready and tendered it to the Court with a request to allow the defendants to file it. The Notice of Motion is in terms taken out for such relief.

4. The agreement for sale dated 12th January, 1985 was for total consideration of Rs.15,00,000/-. An initial payment of only Rs.2,00,000/- was made by

the plaintiffs prior to the filing of the suit. It is the defendant's contention that because a large part of the agreed consideration was not paid by the plaintiff, the defendants were not interested in dealing with the plaintiffs. I have not been shown the termination of the agreement by the erstwhile director of the defendants, the husband of the present director. The defendants have not even sought to create another agreement for sale in favour of any other party. Upon filing of the suit, Court Receiver has been appointed. I am told that a third party has been appointed as agent of the Court Receiver and has since been running the said factory.

5. This is not a case of a dishonest defence by the defendants only seeking to defeat or delay the plaintiff's claim. The defendants appear to be having prima facie a good defence. In fact, the parties require to amicably settle their dispute at a reasonable price for the transfer of the property agreed to be sold.

6. However, the delay is considerable. The defendants cannot be allowed to defend the suit except upon payment of heavy costs for the delay

spanning about 18 years in filing the written statement.

7. Since the defendants have shown sufficient cause as well as prima facie sufficient defence on merits and since the suit merits a reasonable settlement between the parties, the defence of the defendants requires to be considered.

8. Hence, the following order:

> On the defendants paying Rs.10,000/- to the plaintiffs as costs of the Notice of Motion within two weeks from today, the defendants shall be allowed to file their written statement. If the costs are not paid, the suit shall proceed ex parte.

(Smt R.S.Dalvi,J)